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JUN 06 2012

In re Application of	:	OFFICE OF PETITIONS
James D. Krol	:	
Application No. 10/692,857	:	DECISION ON PETITION
Filed: October 27, 2003	:	
Attorney Docket No. 6159	:	

This is a decision on the petition, filed April 24, 2012, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Decision on Appeal of February 15, 2012, which affirmed the examiner's answer mailed July 7, 2010. Extensions of time under 37 CFR 1.136(a)(1) were not permitted. Hence any request for rehearing must have been received within two months of the date of the original decision by the Board. The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action was two months from the date of the decision by the Board. Applicant had until April 15, 2012 to file a reply. On April 17, 2012, the examiner in charge of the application mailed a Notice of Abandonment, having received no response on April 15, 2012.


Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on April 16, 2012 of a request for rehearing. A copy of the previously submitted reply accompanies the petition.

, MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the request for rehearing was timely received in the USPTO.

A review of the file indicates that although the Board decision was mailed February 15, 2012, the two month period for reply of April 15, 2012, would be extended under 37 CFR 1.304(b) (Times for taking action; Expiration on Saturday, Sunday or Federal holiday). In view of the above, the response filed April 16, 2012 is timely and holding of abandonment is hereby withdrawn and the application restored to pending status.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

This application is being referred to the Board of Patent Appeals and Interferences for appropriate action in the normal course of business on the reply received with petition.


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